

FILED

MAR 12 2019

Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

NATIVE ECOSYSTEMS COUNCIL,
and ALLIANCE FOR THE WILD
ROCKIES,

Plaintiffs,

vs.

DONATO JUDICE, Acting Associate
State Director, the BUREAU OF
LAND MANAGEMENT,
DEPARTMENT OF THE INTERIOR,
an agency of the United States,

Defendants.

CV 18-55-BLG-SPW-TJC

ORDER

Before the Court is Plaintiffs Native Ecosystems Council and Alliance for the Wild Rockies' Motion for Judicial Notice (Doc. 48). Plaintiffs request the Court take judicial notice of the Bureau of Land Management's Special Status Species Policy. (*Id.*). Defendants oppose the motion. (Doc. 54).

The parties agree that the BLM did not reference the Special Status Species Policy in the Iron Mask Planning documents at issue and therefore it was not part of the administrative record. (Doc. 49 at 2). The parties also agree that judicial review in this matter is governed by the Administrative Procedure Act ("APA"), 5

U.S.C. § 701-706. (*See* Doc. 41 at 1). Under the APA, judicial review is confined to the administrative record before the agency already in existence, at the time the decisions were made. *San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 973, 993 (9th Cir. 2014). While the Court recognizes that it may nonetheless take judicial notice of extra-record materials in an APA action, Plaintiff has not identified any of those circumstances here.

Accordingly, Plaintiff's motion (Doc. 48) is DENIED.

DATED this 12th day of March, 2019.



SUSAN P. WATTERS
United States District Judge